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Case Law Update

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This Update contains summaries of all relevant Appellate decisions for the preceding week, with comments on how a particular decision affects you. In addition, we review daily the Merit Orders posted on the DOAH website. This Update contains summaries and links to relevant JCC decisions for the past week.

Please feel free to contact Rogers Turner (rturner@hrmcw.com) or Matthew Troy (mtroy@hrmcw.com) with questions or comments on any of the listed cases.

District Court of Appeal Cases

"Padgett v. [?]" dispensed with by Third DCA
State of Florida v. Florida Workers' Advocates et al. (Fla. 3d DCA 6/24/2015)

The Third DCA summarily reversed a circuit judge's much discussed order last year finding F.S. s.440.11 unconstitutional. The opinion's lead paragraph sums up the deficiencies with the lower court case succinctly:

"The initial claims and parties in this case at its inception in 2011 were transformed by the present appellants and their counsel into a completely different set of claims and parties over the three years which followed. In the process, the case lost (1) the essential elements of a justiciable "case or controversy," (2) an identifiable and properly-joined defendant, and (3) a procedurally proper vehicle for the trial court's assessment of the constitutionality of section 440.11."

The DCA followed the convoluted three year history leading up to the judge's ruling, discussing qualifying concepts of Florida Constitutional Law which might allow parties to address the constitutionality of a statute. They noted the lack of the threshold issues of ripeness and mootness precluded them from addressing the underlying alleged constitutional arguments of FWA, WILG and Padgett, and the impermissible "piggy backing" of new plaintiffs onto a predecessor case could not create standing where the first plaintiff dismissed his claim. **Click here to view Opinion**

<u>School Board of Lee County/Johns Eastern Co. v. Huben</u>, **(Fla. 1st DCA 6/22/2015)**
Temporary Indemnity/Limitations following MMI from Physical Injury

The DCA discussed only one of the E/C's four points on appeal, affirming on two and finding a third not ripe. In the remaining issue however, the DCA found the JCC erred in awarding psychiatric benefits in excess of the limitation period in F.S. s. 440.093(3). That section states, subject to the payment of permanent benefits, in no event shall temporary indemnity benefits for a compensable mental or nervous injury be paid for more than 6 months after the date of MMI for the physical injury. The JCC awarded the claimant TTD benefits for her psychiatric injury subject to 440.093(3), but found that the six months was a cumulative period, rather than a calendar period from the date of physical MMI. The DCA rejected this interpretation, and indicated that if the legislature intended anything other than a strict calendar calculation, they would have indicated that, or they may address it in future legislative sessions. **Click here to view Opinion**

<u>Leggett v. Barnett Marine, Inc./Sea Bright Ins./Enstar</u>, **(Fla. 1st DCA 6/4/2015)**
Misrepresentation

The DCA affirmed the JCC's denial of benefits based on fraud. The claimant did not appeal the finding of fraud as it applied to future benefits. Rather, he argued that he should receive the benefits that would have been due either prior to the 9/14 trial, or his 7/13 deposition where he misrepresented his activities while building a dock in October of 2013. The DCA noted he did not prove entitlement to the underlying benefits for any period. The opinion then ends with the statement that "Because fraud was found in this case before adjudication of Claimant's entitlement to the benefits at issue, we do not reach <u>the issue of whether a misrepresentation made after the entitlement to benefits is legally established will disqualify an offending employee-claimant from the right to the payment of benefits.</u>" <u>Alvarez v. Unnico</u> seemed to have previously ruled on that issue. Additionally, the language of s. 440.09(4) notes a claimant who is found to have violated s. 440.105 "shall not be entitled to compensation or benefits under this chapter", which would seem to encompass all benefits. The opinion does not mention the 2013 <u>Carroso v. State</u> case, which reversed a criminal court's inclusion (for restitution purposes) of benefits received prior to a deposition where WC fraud occurred. **Click here to view Opinion**

<u>Moradiellos v. Community Asphalt Co</u>., **(Fla. 3d DCA 6/3/15)**
Workers' Compensation Immunity

The DCA affirmed the trial court's summary judgment ruling in favor of the contractor. The case arose out of an accident that resulted in the death of a surveyor during night work on a turnpike improvement project. The surveyor was killed when he was hit by a dump truck being driven in reverse by a subcontractor. The DCA agreed with the trial court that based upon the undisputed facts, a jury could not find the contractor committed an intentional tort that falls within the statutory exception to WC immunity. There was no evidence of prior similar accidents, no "explicit warnings identifying a known danger" that the contractor would have known would be virtually certain to result in injury or death, nor was there evidence that the employer deliberately concealed or misrepresented a danger. The opinion notes the dump truck driver's actions (driving in reverse and using an incorrect approach road) violated the contractor's safety policies. **Click here to view Opinion**

Beach Community Bank v. Arnette/Reemployment Assistance Appeals Commission, (Fla. 1st DCA 6/2/15)
Misconduct Standard

The DCA affirmed the Commission's finding that the bank did not prove the claimant committed misconduct. The UC standard for "misconduct" is identical to the definition for it in the WC statute. Here, the claimant was a bank teller/customer service rep. During her employment, the bank became involved in litigation with the claimant's husband's LLC. The bank subsequently terminated the claimant for violation of their "conflict of interest" policy. The evidence showed the claimant had no knowledge of her husband's business dealings, the suit had nothing to do with her employment duties, and that the bank did not carry their burden to show their expansive interpretation of their policy established any violation of the rules by the employee. **Click here to view Opinion**

Kline v. JRD Management Corp/CCMSI, **(Fla. 1st DCA 6/2/15)**
Recusal of JCC

The DCA agreed with the claimant that the JCC should have disqualified himself from her case. Recusal of a JCC is governed by the WC Q Rules as well as the Rules of Judicial Administration. One of the criteria is that the "party fears he or she will not receive a fair trial or hearing because of specifically described bias or prejudice of the judge". The fear must be more than a subjective belief. The JCC is not supposed to pass on the truth of the facts alleged, but whether those allegations would place a reasonably prudent person in fear of not receiving a fair and impartial proceeding. Here, the claimant's stated basis stemmed from the JCC's previous referral of her attorney to the Florida Bar and DFS for unfounded criminal and ethical violations. In that proceeding the JCC also referred to the attorney as "not credible", that he had made "false and misleading written statements", that his acts were "unconscionable and abusive" and that had a "willful and conscious intent" to overcharge for services that were "excessive and arbitrary". The JCC denied her motion to disqualify, citing case law which held that a Judge's referral of an attorney to the Florida Bar for ethical violations could not serve as the basis to support disqualification. The DCA found the JCC's words and actions in the prior case amounted to far more than a mere referral to the bar, were more analogous to case law supporting recusal for a judge's prior comments on the veracity of a party, and thus formed a basis for a well founded fear supporting recusal. **Click here to view Opinion**

Please note that the DCA Opinions and Merit Orders contained in this newsletter are non-final until 30 days after their rendition. Until that time, they are subject to amendment, vacation, or other action which may remove or alter some or all of the decision. Please contact any HRMCWW attorney if you have a question as to the finality and applicability of an Opinion or Order. We endeavor to include any amendments or alterations to Opinions or Orders that may occur at a later date.

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